



Waiver Wise

Technical Assistance for the Community Options Program Waiver COP-W

Wisconsin Department of Health & Family Services • Division of Supportive Living
Bureau of Aging & Long Term Care Resources

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Building Participant-as-Employer Arrangements and Fiscal Agents into County Programs

Background

When it comes to meeting the in-home needs of participants, most counties establish contracts with supportive home care and/or personal care agencies. These agencies are responsible for recruiting new workers, hiring and firing workers, managing worker schedules, providing appropriate training, and making necessary arrangements for issuing payroll checks with appropriate deductions. However, another viable option for some participants is available to counties: having the participant be the employer of his/her workers. To handle the financial aspects of participant-as-employer arrangements, counties contract with fiscal intermediaries, sometimes known as fiscal agents. The purpose of this technical assistance document is to explain how fiscal agent arrangements work and how counties can build this option into their system.

In structuring fiscal agent relationships, it is important to understand that the participant, not the county, is the employer of the in-home worker. The county contracts with the fiscal agent in order to facilitate the participant's payment of that worker.

In a fiscal agent arrangement, waiver funds not only pay the workers wages, but also the employer's share of all the appropriate taxes (FICA, Medicare, unemployment tax, etc.) In addition, waiver funds also pay the fiscal agent for services rendered.

What is a Fiscal Agent?

A Fiscal Agent is an entity that provides financial services on behalf of the participant, who is considered the employer. It is important to remember that the fiscal agent is not the employer. Rather, the fiscal agent processes wage payments, benefits, and taxes, and issues checks to the worker on behalf of the participant.

The fiscal agent is generally an organization that offers payroll and financial management services as part of its normal business. Examples of potential fiscal intermediaries/fiscal agents include accounting firms, bookkeeping firms, banks, or law firms.

People acting as individuals would generally be excluded from this role. Therefore, friends, guardians, Powers of Attorney, and neighbors of the participant cannot serve as fiscal agents.

Roles and Responsibilities

The county, the participant, and the fiscal agent all have distinct responsibilities under this program, as outlined in the table below.

RESPONSIBILITIES UNDER PARTICIPANT-AS-EMPLOYER PROGRAMS		
County/Care Manager	Participant	Fiscal Agent
<ul style="list-style-type: none"> County sets requirements for fiscal agent County selects and contracts with fiscal agent, outlining responsibilities and expectations County pays fiscal agent for services County sets pay range for in-home workers Care manager works with participant and authorizes level of service for participant (number of hours and general areas of work such as house keeping, personal care, or outside work) Care manager sets worker criteria (for example, spouses and parents of dependent children cannot be paid with waiver funds) Care manager provides worker orientation as outlined in Appendix N (DCS Memo 88-30) in the MA Waiver Manual Care manager assures that participants and workers fully understand that the participant, not the county, is the employer Care manager reviews timesheets signed by participant for accuracy and completeness and forwards timesheets to fiscal agent Care manager monitors quality of services provided by in-home workers Care manager monitors cost share payment, if applicable Care manager may provide written materials or direct assistance to participants in recruiting and interviewing potential workers 	<ul style="list-style-type: none"> Understands and acknowledges in writing that he/she is the employer Recruits workers Hires workers Directs workers Negotiates work schedule Makes sure that work is done to his/her satisfaction Verifies hours worked, signs workers timesheet, sends to county Fires workers, if necessary Participant provides documentation that illustrates in-home care providers meet the training requirements as outlined in Appendix N (DCS Memo 88-30) If participant has a monthly cost share obligation and the cost share is going towards supportive home care, the participant is obligated to pay their cost share Cost share payments can either be sent directly to the county or to the fiscal agent depending upon the system the county has established 	<p>Carries out fiscal management responsibilities on behalf of the participant under contract with the county, including issuance of:</p> <ul style="list-style-type: none"> Wage payments Social Security and benefit payments and deductions Tax payments and tax withholding W-2 forms and tax statements Other statements or reporting as required by the county In the event the participant sends his/her cost share payment to the fiscal agent, the fiscal agent will assure that accurate withholding will occur. The fiscal agent may also provide the care manager with cost share statements on a quarterly basis.

Commonly Asked Questions and Answers

Question 1 – Why would counties want participants to employ their own workers?

There are a number of reasons why counties would want to allow participants to employ their own workers.

- Some participants are very capable of employing their own workers and look forward to the responsibility, independence, and control this arrangement provides in their lives.
- This arrangement may allow participants to receive care from a trusted neighbor, friend, or family member when that person does not wish to become employed via a contracted agency.
- Using participant-employed in-home workers could expand the available labor pool for in-home care workers in counties.

Question 2 – Why should counties use a fiscal agent?

- Use of a fiscal agent helps assure an arms-length relationship between the county and the employer-employee relationship. It reinforces the fact that the participant, not the county, is the employer.
- Use of a fiscal agent also frees the county from some of the time-consuming and expensive financial management of participant-as-employer arrangements.
- It also ensures that appropriate wage payments and deductions are being made.

Question 3 – How would a county start a participant-as-employer program utilizing a fiscal agent?

- First, the county should develop a policy indicating that it is permissible for participants to be the employer of their workers. There should be clear guidelines that detail those circumstances under which the county will allow participants to hire their own workers. A participant being an employer may be very beneficial for some participants, but it is not appropriate for everyone. Care managers should work from common guidelines in evaluating participant requests.
- The county should outline and document the services that it expects the fiscal agent to provide. The county should obtain proposals and negotiate a contract with a fiscal agent using the appropriate procurement process. The county should also state how the fiscal agent should be paid for the services he/she provides.
- The county should determine the pay range for hired workers and work out the details of compensation, including frequency of payment and benefits.
- The county should develop all appropriate and required forms and procedures. Some examples may include:

- **Fiscal Agent Request Form** – This is a form that the participant would sign to request fiscal agent services. The form should clearly indicate that the participant is the employer.
- **Timesheet** – This would be used for workers to complete and the participant-employer to sign.
- The county needs to establish a process for receiving and reviewing worker timesheets signed by the participant and for computing costs for entry into HSRS.
- The county needs to arrange for worker orientation on Appendix N (88-30 Supportive Home Care standards) and make sure that the orientation is documented. The county also must provide and document other orientation, as appropriate.
- The county should develop guidelines clearly outlining what assistance the county will provide to participants during the worker recruitment and hiring process. This may include written materials provided to participants as they assume their employer's role. It may involve formal orientation sessions or care manager participation in interviews. While counties may determine the type of assistance they provide, it should be clear that the hiring decision is the participant's alone. Please note that care managers can support participants in their hiring decisions by encouraging them to access prospective workers' past legal records.

Question 4 – What other information about fiscal agents should counties be mindful of?

- Recognize that care managers will need to carefully monitor and document participant-as-employer arrangements to assure that quality care is being provided and that problems do not arise.
- Assure that both the participant and the worker thoroughly understand the nature of the employment relationship and their rights and responsibilities under that relationship.
- Make sure the participant can handle the role and duties of being the employer.
- Make sure your fiscal agent contract reflects current legal requirements for paying individual home care workers. These include requirements for:
 - Verifying employment authorization
 - Establishing whether the in-home worker is an employee or an independent contractor (self-employed). Most in-home workers are considered employees
 - Obtaining Federal Employer Identification Number for the participant
 - Paying Social Security Taxes
 - Withholding Federal and State Income taxes
 - Notifying worker about Earned Income Tax Credit and Pay in Advance if requested
 - Paying unemployment insurance taxes (if required)
 - Providing W-2 forms to workers and to Social Security
 - Complying with all Federal and State Wage and Hour Regulations

The fiscal agent and/or County Corporation Counsel should review current employment regulations to assure compliance.

- Consider whether the county should purchase Worker's Compensation Insurance for workers. Worker's Compensation Insurance, which pays for medical expenses and lost income in the event the worker is injured on the job, is not required for consumer-hired home care workers. However, if the county purchases a policy, it may offer protection in the event of a lawsuit. Policies are purchased from insurance companies. However, if an insurer rejects a county, the county may apply to the Wisconsin Compensation Rating Bureau, which operates a high-risk pool. Please note that Waiver funds can be used to purchase Worker's Compensation Insurance; however, the cost should be incorporated into the supportive home care worker rate.

For more information

If you are considering initiation of a participant-as-employer program using a fiscal agent, COP-Waiver Quality Assurance staff at TMG may be of assistance. COP-Waiver Quality Assurance staff can provide names of other counties that use fiscal agents and copies of guides prepared by the Center for Applied Gerontology and Access to Independence that could help participants who are interested in being an employer. The guides provide information about conducting interviews, agreeing on a schedule, and handling problems. If you are interested in these materials, please call your county COP-Waiver Quality Assurance contact at (608) 255-6441.